issue it, *Northington* v. *Sublette* (1902) 114 Ky. 72, 69 S. W. 1076; *cf. Keller* v. *Hewitt* (1895) 109 Cal. 146, 41 Pac. 871, and it must be in the proper form. *Hamlett* v. *Reid* (1915) 165 Ky. 613, 177 S. W. 440. But in the exercise of fair discretion they may refuse to grant such a diploma, and the courts will not interfere, *State ex rel. Niles* v. *Orange Training School etc.* (1899) 63 N. J. L. 528, 42 Atl. 846, unless there has been an abuse of discretion, *State ex rel. Nelson* v. *Lincoln Medical College, supra; cf. Illinois etc. Examiners* v. *People ex rel. Cooper* (1887) 123 Ill. 227, 13 N. E. 201, or their action was purely arbitrary and capricious. *Cf. People ex rel. Cecil* v. *Bellevue etc. College, supra; Hamlett* v. *Reid, supra.* There is an analogous doctrine in the re-instatement cases, where it is held that a student in a public or semi-public institution may not be expelled without sufficient cause. *Baltimore University* v. *Colton* (1904) 98 Md. 623, 57 Atl. 14; *Jackson* v. *State ex rel. Majors* (1899) 57 Neb. 183, 77 N. W. 662. Generally, a mandamus can be had to compel the issuance of a diploma; *State ex rel. Nelson* v. *Lincoln Medical College, supra; Northington* v. *Sublette, supra; contra, State ex rel. Burg* v. *Milwaukee Medical College* (1906) 128 Wis. 7, 106 N. W. 116; and a careful analysis shows that in the cases where mandamus was refused, it was because the person was found by the authorities in the fair exercise of their discretion not qualified in his studies, *Sweitzer* v. *Fisher* (1915) 172 Iowa 266, 154 N. W. 465; *State ex rel. Niles* v. *Orange Training School etc., supra,* or guilty of a serious breach of discipline; *People ex rel. O'Sullivan* v. *New York Law School* (1893) 68 Hun 118, 22 N. Y. Supp. 663; or because a mandamus was not the proper remedy in any event, *State ex rel. Burg* v. *Milwaukee Medical College, supra,* or in a case where the student's qualifications, which would give rise to the right to a diploma, were disputed; *People ex rel. Jones* v. *New York etc. Hospital* (1892) 20 N. Y. Supp. 379; but in none of these is the right of a properly qualified person to a diploma denied.

MASTER AND SERVANT—INDEPENDENT CONTRACTOR.—One McGuire contracted to deliver the defendant's goods. McGuire was to furnish his own services, a horse and wagon, on which was painted the defendant's name, and was to receive $27 a week. He was to report every day at the defendant's factory at 8 A. M. and work until 5:30 P. M. McGuire's horse, which was known by him to be vicious, bit the plaintiff. *Held,* "It is perfectly clear on the evidence that the relationship of master and servant existed between McGuire and the company" and that therefore the defendant was liable for the plaintiff's injury. *Stapleton* v. *Butensky* (App. Div., 1st Dept. 1919) 177 N. Y. Supp. 18.

Upon the evidence it is not so clear that McQuire was the servant of the defendant. He was a servant only if he was doing the defendant's work as distinguished from an undertaking of his own. See the dissenting opinion in *Schmedes* v. *Deffaa* (1912) 153 App. Div. 819, 138 N. Y. Supp. 931, adopted by the Court of Appeals in 214 N. Y. 675. Factors to be considered in determining whose work was being done are: in whom was the control of the work; *Andrews* v. *Boedecker* (1885) 17 Ill. App. 213; who furnished the material or tools; contrast *Ireland* v. *Clark* (1912) 109 Me. 239, 83 Atl. 667 with *Linquist* v. *Hodges* (1911) 248 Ill. 491, 94 N. E. 94; and who bore the risk of profit and loss; see *People* v. *Orange County Rd. Const. Co.* (1903) 175 N. Y. 84, 90, 67 N. E. 129. In the instant case, it is an admitted fact that McGuire furnished the horse and wagon, the tools necessary for the work, and

the fact that the defendant's name appeared thereon does not affect the case. *Foster* v. *Wadsworth-Howland Co.* (1897) 168 Ill. 514, 48 N. E. 163. It is also clear that he was to bear the risk of profit and loss as he was bound to deliver the defendant's goods at a stipulated sum per week, regardless of the cost. It would seem, therefore, that delivering the goods was the undertaking of McGuire rather than that of the defendant. *Wood* v. *Cobb* (1866) 95 Mass. 58. Even though the control of the work as to its result rested with the defendant, this fact alone would not make McGuire a servant. *Hawke* v. *Brown* (1898) 28 App. Div. 37, 50 N. Y. Supp. 1032; *Gall* v. *Detroit Journal Co.* (1916) 191 Mich. 405, 15 N. W. 36; *McGee* v. *Stockton* (1916) 62 Ind. App. 555, 113 N. E. 388. According to many decisions it would seem that McGuire was an independent contractor. *Cf. Burns* v. *Michigan Paint Co.* (1908) 152 Mich. 613, 116 N. W. 182; *Cohen* v. *Western Electric Co.* (1906) 50 Misc. 660, 99 N. Y. Supp. 525; *Jahn's Adm'r.* v. *Wm. H. McKnight & Co.* (1904) 117 Ky. 655, 78 S. W. 862; *Foster* v. *Wadsworth-Howland Co., supra.*

NEGLIGENCE—PROXIMATE CAUSE—INCONSISTENT FINDINGS OF FACT.—The defendant leased certain premises to the plaintiff's employer, covenanting to furnish heat. The defendant failed to heat the premises as agreed, in spite of repeated complaints by the plaintiff. The plaintiff became afflicted with tuberculosis. The jury found (1) that the defendant's failure to perform his covenant constituted actionable negligence and was the proximate cause of the plaintiff's injury, and (2) that the plaintiff was not contributorily negligent. The trial judge allowed a verdict based on these findings to stand as against a motion for a new trial. *Hansman* v. *Western Union Telegraph Co.* (Minn. 1919) 174 N. W. 434.

The jury, by finding that the defendant's wrongful act was the proximate cause of the plaintiff's injury, found that the plaintiff's injury was the natural and direct result of the defendant's failure to furnish heat,—that the consequences were such as an ordinarily prudent man might have anticipated under the circumstances. *Kommerstad* v. *Great Northern Ry.* (1913) 120 Minn. 376, 139 N. W. 713; *Wallin* v. *Eastern Ry.* (1901) 83 Minn. 149, 86 N. W. 76; *Burnham* v. *Boston & Maine R. R.* (1917) 227 Mass. 422, 116 N. E. 735. The plaintiff's reiterated complaints to the defendant fairly indicate that she not only realized that the building was not being properly heated but also knew in some way, just how is unimportant, that the defendant was the party upon whom the duty to heat rested. Having this knowledge, the plaintiff, as an ordinarily reasonable person, would be charged with notice of the results which might naturally flow from the defendant's conduct, *Borden* v. *Daisy Roller-Mill Co.* (1898) 98 Wis. 407, 74 N. W. 91; *Soutar* v. *Minneapolis I. E. Co.* (1897) 68 Minn. 18, 70 N. W. 796, and therefore by continuing to work on the premises, must be held to have assumed the risk of those consequences or else to have been contributorily negligent. *Borden* v. *Daisy Roller-Mill Co., supra.* The findings (1) that the defendant's act constituted actionable negligence and was the proximate cause of the plaintiff's injury, and (2) that the plaintiff was not contributorily negligent, were inconsistent and the court should not have allowed the verdict to stand.

QUASI-CONTRACTS—SALES—ACCEPTANCE OF EXCESS QUANTITY OF GOODS BY MISTAKE.—The plaintiff contracted to buy and the defendant to